

The Role of Counsel and Beyond

Emerging Issues in Delinquency
Defense

Juvenile Immersion Training Project



NATIONAL JUVENILE DEFENDER CENTER

Is the role of juvenile defense counsel the same or different from that of an adult criminal defense attorney? How would you define the role of juvenile defense counsel?

Is there role confusion in your jurisdiction? Are other stakeholders in the jurisdiction confused about the juvenile defense attorney's role?

Role of Counsel

Best Interest



Express Interest



Liberty Interest

Every decision impacts the child's liberty interest. Most of the right to counsel is about assistance with decision making.

In a delinquency case, the CHILD
has the constitutional right to
expressed interest
representation.

What role does the parent play in directing the course of representation for a youth in a delinquency case?

Fact Pattern

Charles

- **Can you (must you) tell the court that Charles lied about his father being his legal guardian?**
- **Maybe. You are not supposed to lie to the court or betray the client's confidence**

- Have you violated any ethical rules by going out to find your client, Charles, despite the father's **instruction not to?**
- **No, duty of loyalty is to Charles.**
- Can you talk to Charles's aunt/sister?
- **Not unless you get his permission. You have to maintain confidential relationship.**

- **Can you investigate the factual allegations in this case?**
- **Answer: Yes. In fact, you must.**

- **What if you decide to conduct some preliminary investigation and come to believe that there is a very clear Fourth Amendment violation in this case? What do you say when Charles tells you that his father told him to plead guilty?**

In a delinquency case, the CHILD
has the constitutional right to
expressed interest
representation.

Complications

- What if the client makes really bad decisions??

- Even an impaired client must make the critical decisions in a case:
 - Statement
 - Plea
 - Testify

Impaired Client

- Rule 1.14
 - Try to keep normal relationship
 - Protective Action-not best interest still need to determine what client would want
 - Not substituted judgment

Can anyone overpower the client's
decision making?

Competence

- *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam)
- The U.S. Supreme Court held that the record for the petitioner's case did not sufficiently support the findings regarding the petitioner's competency to stand trial. The conviction was reversed and the case was remanded to the District Court for a hearing to determine the petitioner's competency to stand trial. The petitioner was to receive a new trial if found competent.

Competence

- An incompetent client is not able to make knowing intelligent and voluntary decisions
- What is role of counsel for an incompetent client?

- **When should you ask that your client be evaluated for competency?**
- **If you thought competency was an issue, will you discuss this with your client?**
- **If you believe that your client is incompetent, **must** you always raise the issue even if the consequences of a delinquency finding are likely to be mild – perhaps even milder than the consequences of a finding of incompetency?**

Confidentiality

Protecting your client

Rule 1.6

Rule 1.6. Confidentiality of Information

- (a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d).
 - (b) A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm.
 - (c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary to:
 - (1) Prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another;
 - (2) Prevent, mitigate or rectify the consequence of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used;
 - (3) Secure legal advice about the lawyer's compliance with these Rules;
 - (4) Comply with other law or a court order.
 - (5) Detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
 - (d) A lawyer may reveal such information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.
 - (e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
-

Things to watch out for.....

Breaking the Privilege

- Parents
- DCF
- GAL
- Legal Staff
- Experts
- Probation “Just sign these sheets mom, the judge requires it.”

Detention Information

- C.G.S. 46b-124(j) says mental health screens can't be used in court. But...
- Can be given to an evaluator in a Court ordered assessment.

Detention Information

- Disciplinary Sheets-
 - Shared with court, become part of the record.
 - Also becomes part of CSSD file.
- Educational Records
 - Will be shared with the school.
 - Could contain other non educational info.
 - Right to release runs to the parent.

Evaluations

- Exercise Control over what the evaluator sees.
- Court ordered assessments become part of CSSD and court file.
- When released to a provider, might be redisclosed.
- What about private assessments?

School Information

- Right to release runs to the parent.
- New Legislation easing restrictions on sharing between DCF and schools.
- If DCF is the parent, they can(and do) release records to who ever they want.
- Its DCF policy not to give the child's lawyer the school records. You get a summary!

Court Records

- Statutory Exceptions
- “Compelling Need”
 - *In Re Sheldon G.*, 216 Conn. 563 (1990)
- Not automatically erased.
- Shared with adult court.
 - Charges, convictions
- Post Adjudication Orders.

DCF Records

- Statutory restrictions on sharing with CSSD being eased.
- Prosecutor can ONLY get if allegation of child abuse and client is the aggressor!
- If they are the parent, they decide who to share with.
- Use the power of the court!

Collateral Consequences

- Public housing
- School
- Job applications
- Eligibility for financial aid
- Participation in the armed forces
- Citizenship

Brain Development and Defense of Juvenile Cases

United States
Supreme Court
Cases

Supreme Court Affirmation of Developmental Differences of

Youth
Matters

U.S. Supreme Court decisions have affirmed a differential jurisprudence for youth

Roper v. Simmons (2005)

Youth are:

- immature and reckless
- more susceptible to peer pressure
- developing and therefore transient by nature

Graham v. Florida (2010)

“...because juveniles have lessened culpability they are less deserving of the most severe punishments.”

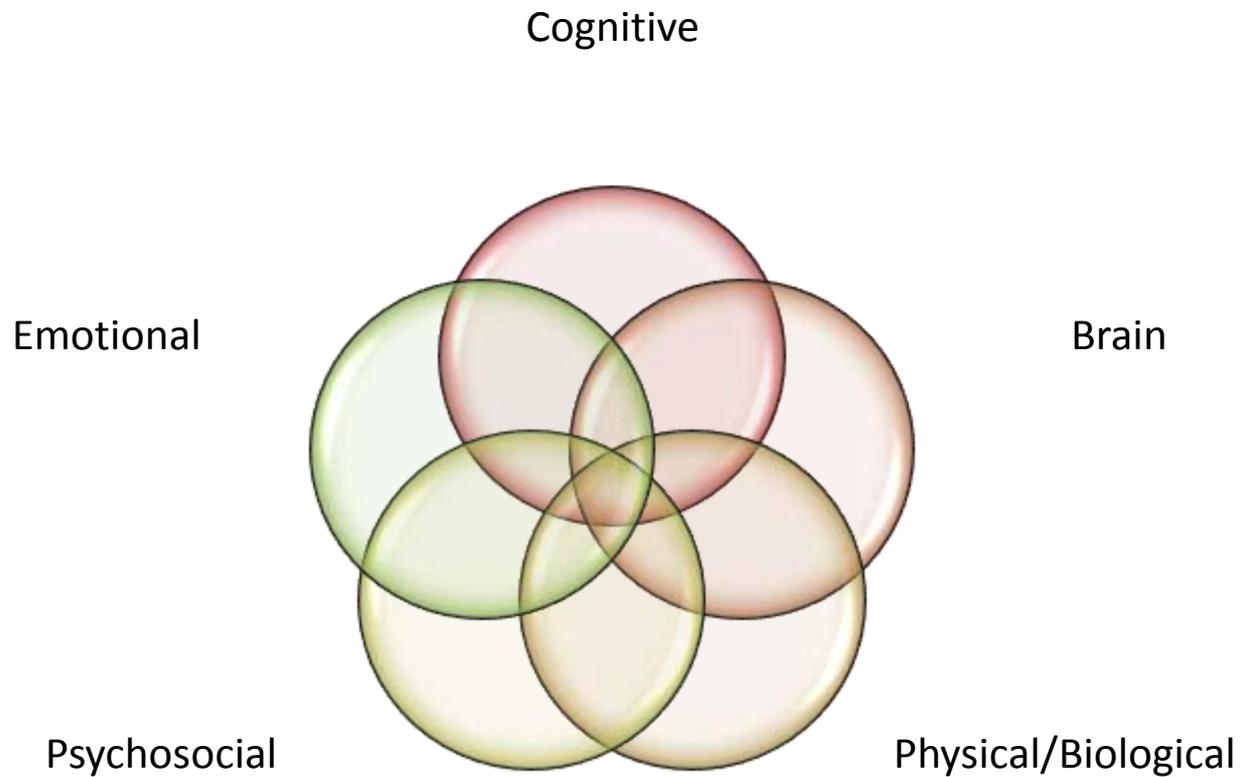
JDB v. North Carolina (2011)

Court says that youth “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them...”

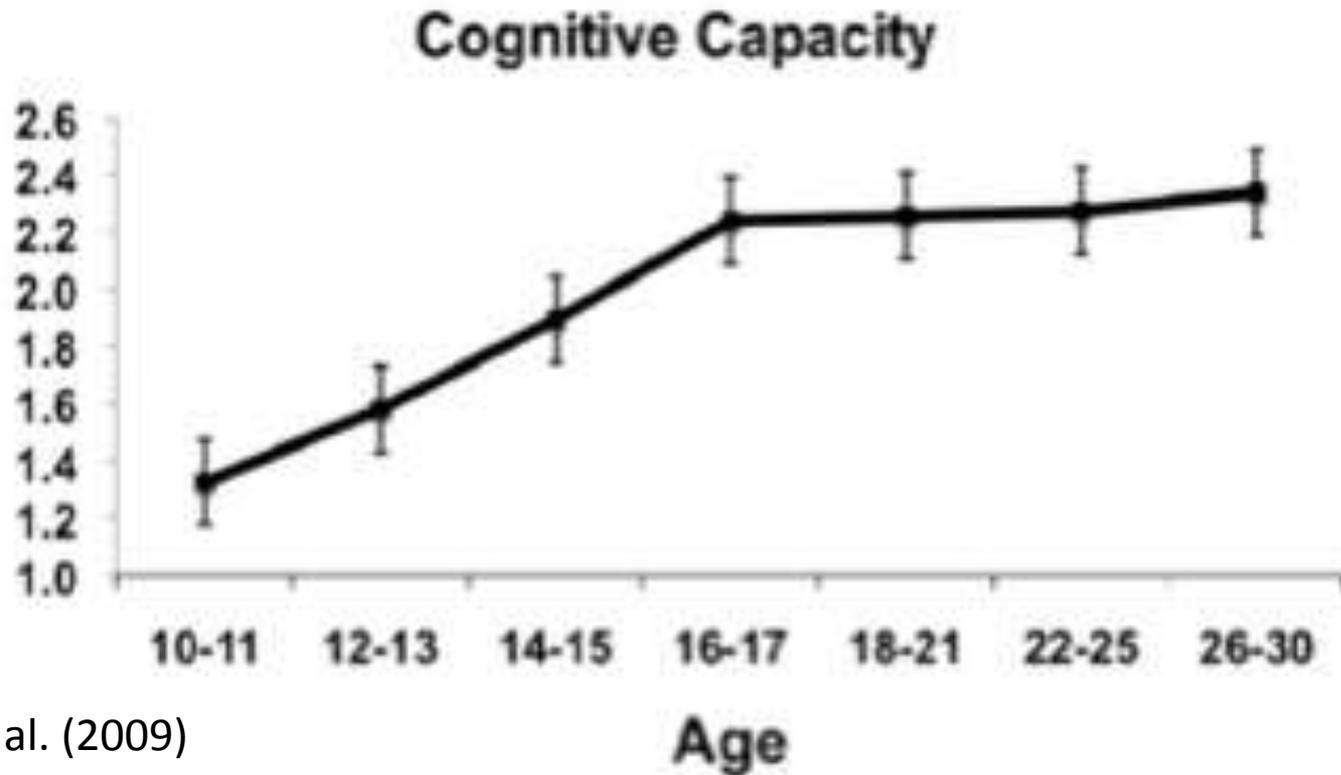
Miller v. Alabama (2012)

“The penalty when imposed on a teenager, as compared to an older person, is therefore “the same ... in name only.””

Different Domains



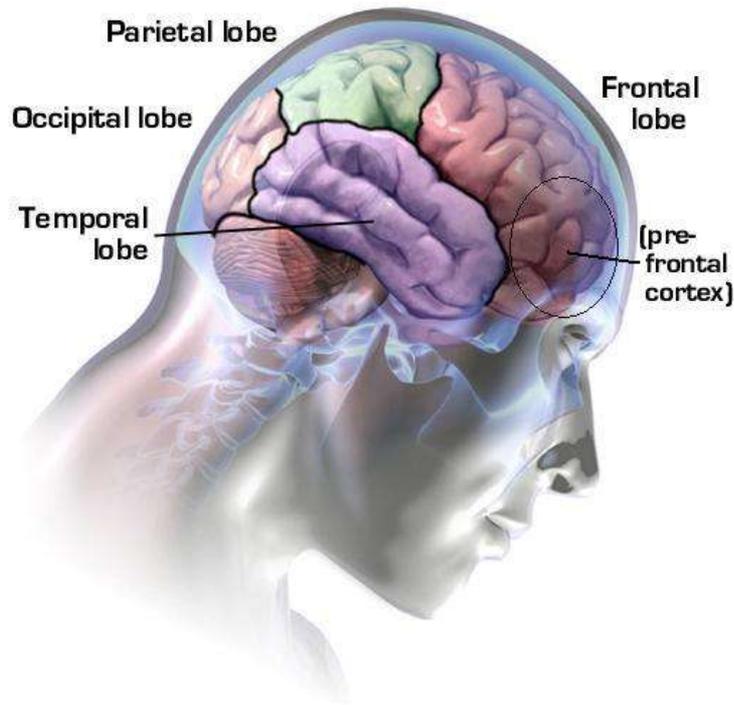
General Cognitive Capacity X Age



Steinberg et al. (2009)

The Adolescent Brain: Under Construction

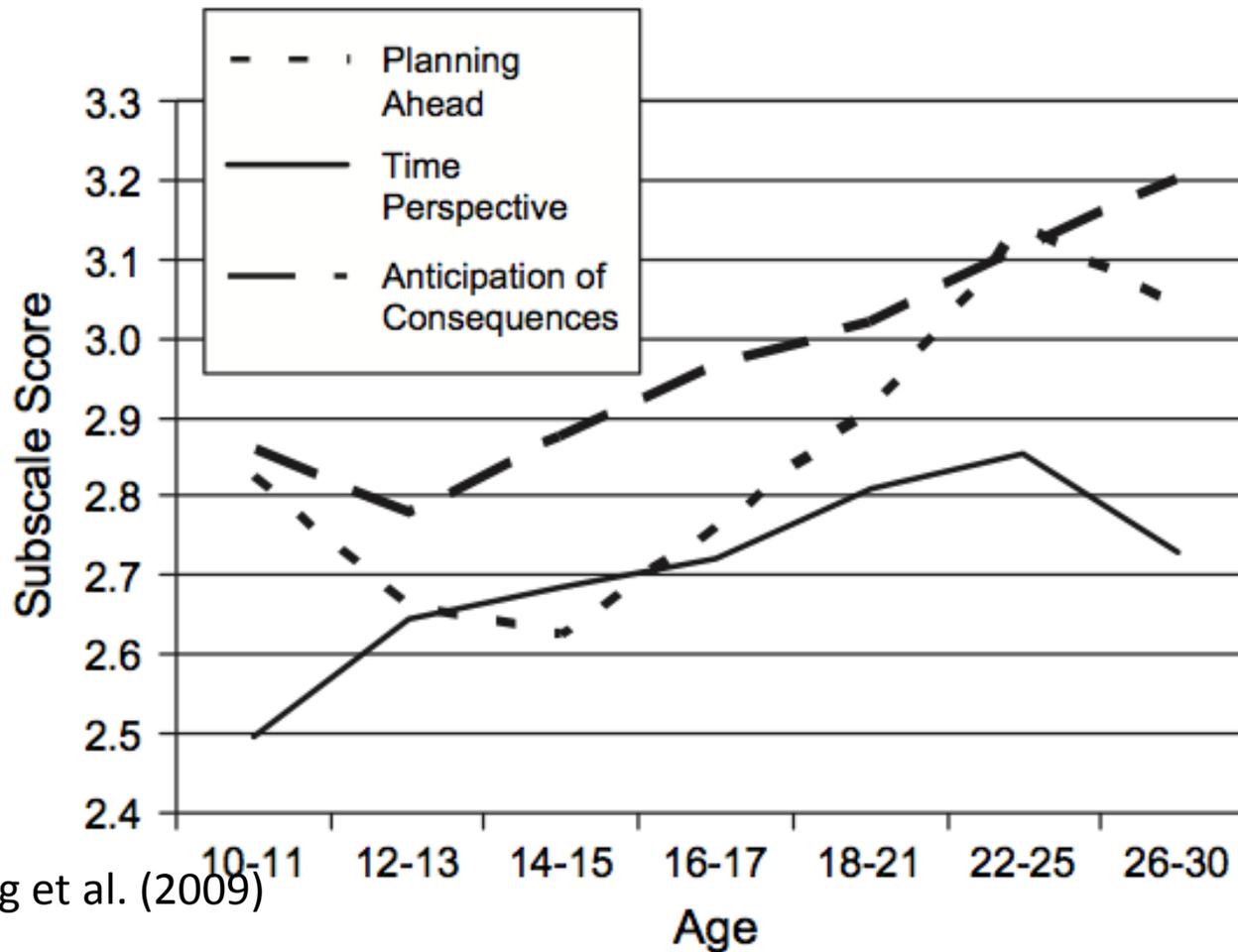
Lobes of the Brain:



The frontal lobe:

- Last area to mature and is under construction until the early 20s
- Responsible for or plays a significant role in:
 - Anticipating consequences
 - Planning and sequencing
 - Recognizing emotions
 - Thinking flexible
 - Controlling impulses

Things change as we age



Steinberg et al. (2009)

Voluntariness

The research suggests that youth are more vulnerable to coercion.

- Youth may be more likely to consent to a search, waive Miranda rights and/or confess to the police without considering the implications.**

Statements

Miranda v. Arizona

- What triggers Miranda rights?
 - Custody
 - Interrogation
- Defendant must be informed of the:
 - right to consult with an [attorney](#) before and during questioning
 - right against [self-incrimination](#) before police questioning.
- Waiver of these right must be done knowingly, intelligently and voluntarily.

Miranda v. Arizona

- How does a child's development impact ability to give a waiver?

What impacts a knowing intelligent and voluntary waiver?

- **Impulsivity and failure to consider future consequences**
- **Peer Influence**
- **Stress and fear**
- **Risk-taking and sensation thinking**

Grisso Study (2003)

- Found that youth are particularly vulnerable to poor decisions in legal contexts
- Assessed the influence of compliance with authorities on decision-making in three different legal scenarios: confessing to the police, accepting a plea agreement and disclosing to an attorney.
- Found that youth 15 years old and younger were significantly more likely than older youth to make decisions that represented compliance with authorities.

Steinberg Study (2009)

- Investigated whether or not adolescents thought differently about the future consequences of their decisions than adults.
- Kids under 16 were less likely to think about the future, less likely to anticipate future consequences and more likely to prefer smaller immediate rewards than larger delayed rewards.

Viljoen and Roesch (2005)

- Younger youth have difficulty understanding Miranda warnings, in part because their cognitive abilities (i.e., abilities related to comprehension, thinking and reasoning) are still developing.

Kids are different

- Don't make good decisions under stress
- What can be more stressful than an encounter with the police?
- Confession is NOT good for the soul in a criminal case.(Mom, Dad, DCF not good substitutes for counsel)
- PD/DCF agreement

- Lawyer's job is to protect client's rights
- Usually not helpful to give a statement
- Stoddard letter helpful with DCF cases
- Must intercede if Parent/DCF is letting client speak without counsel

What if they talk anyway

- JDB v. North Carolina
 - Court must consider the view of a “reasonable child” when determining if a child considers self to be in custody for analysis under *Miranda v. Arizona*.

Solutions

- Stoddard letter-even when kid has parents
- Counsel client
- Make a record

Transfer

Discretionary Transfer

C.G.S. 46b-127(b)

- Hearings must be held in Juvenile Court
- Court must find
 - the child was at least age 14 when the offense was committed
 - there was probable cause to believe that the child committed the act with which he or she was charged.
 - the best interests of the child and the public will not be served by maintaining the case in the superior court for juvenile matters.

Discretionary Transfer

C.G.S. 46b-127(b)

- Factors to considering best interest of child **and** community
 1. the child's prior criminal or juvenile court convictions and their seriousness,
 2. any evidence that the child has intellectual disability or mental illness, and
 3. the availability of juvenile court services that can serve the child's needs.

Discretionary Transfer

C.G.S. 46b-127(b)

- State has 30 days from juvenile court arraignment to move to transfer
- Adult court can transfer back at any time prior to verdict or plea for good cause shown
- Transfer finalized upon arrival at adult court.
 - Still eligible for YO confidentiality protections

Transfer Hearings

- **The developmental research may be useful in arguing against transfer criteria in transfer hearings.**

Seriousness of the Offense

- **Highlight psychosocial characteristics of adolescence (susceptibility to peer influence; tendency towards more risky behaviors; lack of future orientation; lower impulse control) and**

Culpability

- **Drawing parallels between those and the circumstances surrounding the client's role in the offense**
 - **For example, if this was an offense committed within a group, the role of peers in the presenting offense may be highlighted.**

Amenability to Treatment

- **Adolescence is a time of plasticity and malleability**
- **Youth are acquiring the skills and capacities needed to make better decisions and use sound judgment.**
- **Most youth will mature into responsible adults.**

Best Interest of Client or Community

- No programs in adult court
- High recidivism rates for transferred youth
- Almost never going to be in child's best interest to be transferred.

Christine Rapillo
Director of Delinquency Defense
and Child Protection
Office of the Chief Public Defender
330 Main Street
Hartford CT 06106
860 566-1341
Christine.Rapillo@jud.ct.gov